

- (1) Did the Administrative Law Judge err in awarding claimant temporary total disability compensation in contravention of K.S.A. 44-510c(b)(1)?
- (2) Did the Administrative Law Judge err in denying respondent the right to direct medical care?
- (3) Did the Administrative Law Judge err in wrongfully ordering respondent to pay medical bills incurred with Jim Jury, O.D., prior to the date of the preliminary hearing award without specifying which bill should be paid and without specifying that the bills be related to the accidental injury?

- (4) Did the Administrative Law Judge err in finding claimant suffered accidental injury which arose out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be affirmed.

With regard to issues 1 through 3, the Board finds it does not have jurisdiction to consider claimant's entitlement to temporary total disability compensation or any decisions by the Administrative Law Judge dealing with the entitlement to medical treatment or the payment of medical bills incurred.

K.S.A. 44-534a and K.S.A. 2001 Supp. 44-551 set out specific issues which may be considered by the Board on appeal from preliminary hearings. They include whether a worker sustained an accidental injury, whether the injury arose out of and in the course of employment, whether the worker provided timely notice or timely written claim, and finally whether certain defenses apply. These issues are considered jurisdictional and are appealable to the Board from preliminary hearing decisions.

K.S.A. 44-534a specifically allows an administrative law judge the authority to order medical treatment, past and future, and temporary total disability compensation. Issues 1 through 3 are not appealable to the Board on appeal from preliminary hearing, and the respondent's appeal on those issues is dismissed.

The Board will, however, consider whether claimant suffered accidental injury arising out of and in the course of his employment, as this is an issue appealable under K.S.A. 44-534a from a preliminary hearing decision.

Claimant, a 5-year employee with respondent, developed recurrent episcleritis secondary to environmental exposure. Claimant was also diagnosed with ksicca, a.k.a. dry eye, and recurrent pingueculitis, defined as a small yellowish elevation situated near the inner or outer margins of the cornea and occurring especially in people of advanced age. Claimant was referred to Jim Jury, O.D., an optometrist, who provided information that claimant's condition, which he described as preexisting, became symptomatic if claimant was exposed to heat and wind. Dr. Jury in his April 25, 2002 note, stated that claimant needs to work in a different department "because where he works is affecting his eyes."

Claimant brought his medical recommendations for a change of job to respondent and was placed on leave of absence and signed up for disability benefits.

Respondent argues claimant has failed to prove that his eye condition is a result of his work, contending instead, pursuant to the report of Dr. Jury, that it is caused by wind and heat. Respondent argues claimant is exposed to wind and heat on a daily basis in western Kansas. Therefore, claimant's condition should not be considered a work-related accident.

Claimant, however, argues that when he was moved to the hock blowing job, he became exposed to a substantial amount of steam in the workplace. It is this exposure to increased steam which allegedly caused claimant to develop these problems. Claimant testified that he had never experienced eye problems before being transferred to the hock blowing job.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

It is well established under the Workers' Compensation Act in Kansas that, when a worker's duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.²

The Board finds for preliminary hearing purposes that claimant has proven that his eye condition has, at least on a temporary basis, been aggravated by the work conditions associated with the hock blowing job. This additional exposure to steam has caused claimant's eye condition to worsen, therefore entitling claimant to workers' compensation benefits.

The Board, therefore, finds that the Order of the Administrative Law Judge granting claimant preliminary benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated August 15, 2002, should be, and is hereby, affirmed.

¹ See K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

² *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
 Terry J. Malone, Attorney for Respondent
 Pamela J. Fuller, Administrative Law Judge
 Director, Division of Workers Compensation